



IN THE
TENTH COURT OF APPEALS

No. 10-09-00125-CR

IN RE CHRISTOPHER LYNN COWAN

Original Proceeding

MEMORANDUM OPINION

Christopher Lynn Cowan seeks by mandamus to compel the trial court to grant his motion for judgment nunc pro tunc for pre-sentence jail time credit. The petition is denied.

Cowan's petition for writ of mandamus was filed in this Court on April 23, 2009. However, Cowan did not provide a proper proof of service.¹ See TEX. R. APP. P. 9.5. Further, Cowan attaches documents which he swears are true and correct. But Cowan's oath does not conform to the unsworn declaration by inmates provision in the Texas Civil Practice and Remedies Code. See TEX. CIV. PRAC. & REM. CODE ANN. § 132.003 (Vernon 2005). Traditionally, we would notify Cowan of these deficiencies and allow him the opportunity to correct the problems. However, because we deny the petition on the merits, we use Rule 2 to suspend the operation of the service and unsworn

¹ Cowan served the District Judge but did not serve the real party in interest, the State.

declaration requirements and proceed to a disposition in this proceeding. *See* TEX. R. APP. P. 2.

Cowan attached copies of documents to his petition that were allegedly filed with the trial court. Those documents indicate that Cowan filed a motion nunc pro tunc with the trial court asking for pre-sentence jail time credit. The copy of the motion is signed and dated January 22, 2009. Cowan then allegedly filed a “Motion to Take Matter Under Advisement” which was signed and dated March 14, 2009. In that document, Cowan gave the trial court seven days to rule on his motion nunc pro tunc. Cowan now requests this Court “issue this Writ and require the trial court to enter credits properly.” We cannot compel the trial court to rule on Cowan’s motion in a certain or particular way. *See State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App. 1987).

Accordingly, Cowan’s petition is denied. Cowan’s “Motion for Leave to File” is dismissed as moot.²

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis
Petition Denied
Motion dismissed
Opinion delivered and filed May 20, 2009
[OT06]

² The Rules of Appellate Procedure were amended in 1997 to eliminate the need for a motion for leave to file the petition. *See* TEX. R. APP. P. 52, Notes and Comments.